

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \*

DOES 1-35, and UNKNOWN NAMED  
DOES 1-1000,

Case No. 2:15-cv-01638-RFB-DJA

## ORDER

**Plaintiff(s).**

V.

THE STATE OF NEVADA *ex rel.* Aaron Ford,  
*Attorney General of the State of Nevada;*  
GEORGE TOGLIATTI, *Director of the Nevada*  
*Department of Public Safety;*  
NATALIE WOOD, *Chief Parole and Probation*  
*Division of the Nevada Department of Public*  
*Safety;* CHRISTOPHER DERICO; *Chair of the*  
*Nevada Board of Parole Commissioners;* et al.,

Defendant(s).

## I. INTRODUCTION

Before the Court is Defendants' Motion for Summary Judgment (ECF No. 145) and Defendants' Rule 59 Motion to Alter or Amend Judgment (ECF No. 149).

## II PROCEDURAL BACKGROUND

Plaintiffs filed their first Complaint on August 25, 2015. ECF No. 1. The complaint challenges the retroactive application of movement and residency restrictions to Plaintiffs, who are all registered sex offenders on several constitutional grounds, including the Ex Post Facto Clause. On January 21, 2016, the parties stipulated to the dismissal of Defendants Lombardo, Moers, and Perez. ECF Nos. 33, 34. On September 9, 2016, the Court granted Plaintiff leave to

1 file an amended complaint and dismissed a pending motion to dismiss without prejudice. ECF No.  
2 42. Plaintiff filed the first amended Complaint on October 11, 2016. ECF No. 45. Defendants  
3 Conmany, Laxalt, Wood, and Wright filed an Answer on October 25, 2016. ECF No. 32. On April  
4 23, 2018, Plaintiffs filed a Motion for Partial Summary Judgment. ECF No. 68. Defendants  
5 responded on May 14, 2018. ECF No. 70. Plaintiffs replied on May 28, 2018. ECF No. 72.

7 On January 17, 2019, the Court denied the motions to dismiss/summary judgment and  
8 granted Plaintiffs leave to amend the complaint to add the State Board of Parole Commissioners.  
9 ECF No. 75. The Court also reopened discovery for 120 days. Plaintiff filed the operative second  
10 amended complaint on January 28, 2019. ECF No. 76. Defendants answered the amended  
11 complaint on March 5, 2019. ECF No. 94. A settlement conference occurred on June 25, 2019. A  
12 settlement was not reached. ECF No. 108. Plaintiffs Does 1-35 filed their second motion for  
13 summary judgment on September 16, 2019. ECF No. 112. A response and reply were filed. ECF  
14 Nos. 116, 118. On March 9, 2020, the Court heard oral argument on the motion. ECF No. 127. On  
15 September 29, 2020, the Court issued a written order on the motion. ECF No. 148. Defendants  
16 filed a Rule 59 Motion to Alter or Amend Judgement or in the alternative Rule 60 Motion for  
17 Reconsideration. ECF No. 149.

20 On September 14, 2020, Defendants filed a Motion for Summary Judgment. ECF No. 145.  
21 A response and reply were filed. ECF Nos. 150, 152.

23 This written order follows.  
24

25 **III. FACTUAL BACKGROUND**

26 **a. Undisputed Facts**

27

28

The Court incorporates by reference the undisputed facts in the Order granting Motion for Summary Judgment (ECF No. 148).

**b. Disputed Facts**

The Court finds there to be no disputed facts.

#### **IV. LEGAL STANDARD**

**a. Summary Judgment**

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322(1986). When considering the propriety of summary judgment, the court views all facts and draws all inferences in the light most favorable to the nonmoving party. Gonzalez v. City of Anaheim, 747 F.3d 789, 793 (9th Cir. 2014). If the movant has carried its burden, the nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts .... Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (internal quotation marks omitted).

It is improper for the Court to resolve genuine factual disputes or make credibility determinations at the summary judgment stage. Zetwick v. Cty. of Yolo, 850 F.3d 436, 441 (9th Cir. 2017) (citations omitted).

**b. Rule 59 Motion to Alter Judgment**

Rule 59(e) allows for a motion to alter or amend a judgment within twenty-eight days after the entry of the judgment. Fed. R. Civ. P. 59(e). “Since specific grounds for a motion to amend

1 or alter are not listed in the rule, the district court enjoys considerable discretion in granting or  
 2 denying the motion.” McDowell v. Caleron, 197 F.3d 1253, 1255 n. 1 (9th Cir. 1999). But the  
 3 relief provided for is extraordinary and “should be used sparingly.” Allstate Ins. Co. v. Herron,  
 4 634 F.3d 1101, 1111 (9th Cir. 2011) (citing McDowell, 197 F.3d at 1255). The “four basic grounds  
 5 upon which a Rule 59(e) motion may be granted [are]: (1) if such motion is necessary to correct  
 6 manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to  
 7 present newly discovered or previously unavailable evidence; (3) if such motion is necessary to  
 8 prevent manifest injustice; or (4) if the amendment is justified by an intervening change in  
 9 controlling law.” Id.

12                   **c. Rule 60(b) Motion to Reconsider**

13                  Under Federal Rule of Civil Procedure 60(b), a court may relieve a party from a final  
 14 judgment only in the following circumstances: (1) mistake, inadvertence, surprise, or excusable  
 15 neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been  
 16 discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called  
 17 intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is  
 18 void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment  
 19 that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any  
 20 other reason that justifies relief. See Mackey v. Hoffman, 682 F.3d 1247, 1250 (9th Cir. 2012).

23                   **V. DISCUSSION**

25                   **a. Motion for Summary Judgment**

26                  Defendants argue that they are entitled to summary judgment as a matter of law because  
 27 all Defendants named in their individual capacities are entitled to the protections of qualified  
 28

1 immunity. For the reasons stated in the Court's previous order on Plaintiffs' Motion for Summary  
2 Judgement and which are incorporated here by reference, the Defendants' motion is denied.  
3 Qualified immunity is not available for prospective injunctive relief. See Hydrick v. Hunter, 669  
4 F.3d 937, 939–40 (9th Cir. 2012) (“Qualified immunity is only an immunity from a suit for money  
5 damages, and does not provide immunity from a suit seeking declaratory or injunctive relief.”).  
6 While the Nevada Supreme Court has not explicitly held the same for discretionary immunity, the  
7 Ninth Circuit has held that discretionary function immunity does not apply to violations of the  
8 Constitution or the Federal Tort Claims Act, from which Nevada’s discretionary act immunity  
9 statute is derived. See Nurse v. United States, 226 F.3d 996, 1002 (9th Cir. 2000) (noting that even  
10 though generally policies are subject to discretionary act immunity, “governmental conduct cannot  
11 be discretionary if it violates a legal mandate”); Martinez v. Maruszczack, 168 P.3d 720, 727 (Nev.  
12 2007).  
13

14 **b. Rule 59 Motion to Alter Judgment/Rule 60 Motion to Reconsider**

15 Defendants ask this Court to modify the injunction issued in its Order (ECF No. 148). The  
16 scope of injunctive relief is properly dictated by the extent of the violation established. Califano  
17 v. Yamasaki, 442 U.S. 682, 702 (1979). An overbroad injunction is an abuse of discretion. E. & J.  
18 Gallo Winery v. Gallo Cattle Co., 967 F.2d 1280, 1297–98 (9th Cir. 1992). An injunction is  
19 overbroad where it is not tailored to eliminate only the specific harm alleged, goes beyond what  
20 would be required to remedy the harm, or enjoins conduct that has not been found to violate law.  
21 See Id.; see also Skydive Arizona, Inc. v. Quattrocchi, 673 F.3d 1105, 1116 (9th Cir. 2012);  
22 Addington v. US Airline Pilots Ass'n, 791 F.3d 967, 1000 (9th Cir. 2015); McCormack v.  
23 Hiedeman, 694 F.3d 1004, 1019 (9th Cir. 2012). However, an injunction should not be so narrow  
24 as to invite easy evasion. Skydive Arizona, Inc., 673 F.3d at 1116.  
25  
26  
27  
28

1           Under the standards enunciated above, the Court finds that the injunction would benefit  
2 from clarification in order to tailor it to the specific harm demonstrated by the Plaintiffs in this  
3 case. It was not the intent of the Court to address in its injunctive order any release conditions that  
4 were not the subject of and disputed in this litigation. Accordingly, the Court will clarify the  
5 injunction in its order below.

7           **VI. CONCLUSION**

8           **IT IS THEREFORE ORDERED** that Defendants' Motion for Summary Judgment (ECF  
9 No. 145) is DENIED.

10           **IT IS FURTHER ORDERED** that Defendants' Rule 59 Motion to Alter or Amend  
11 Judgment (ECF No. 149) is GRANTED in part. The injunction issued in ECF No. 148 is hereby  
12 VACATED. A clarified injunction is issued below.

13           **IT IS FURTHER ORDERED** that Defendants are permanently enjoined from enforcing  
14 any retroactive imposition of residency and movement restrictions not specifically set forth in NRS  
15 213.1243 before October 1, 2007 to any plaintiffs who meet the following conditions:

- 16           1. The plaintiff's last relevant criminal offense occurred before October 1,  
17           2007.  
18           2. A "relevant" criminal offense is any offense that would trigger the  
19           movement and residency restrictions of SB 471.

20           **IT IS FURTHER ORDERED** that a status conference is set in this case for November 9,  
21 2021 at 11:45 AM by videoconference. The instruction for videoconference appearance to be  
22 issued. The status conference will, in part, address the issue of damages.

24           DATED: September 30, 2021.



---

25           **RICHARD F. BOULWARE, II**  
26           **UNITED STATES DISTRICT JUDGE**